

REMARKS

1. Status of the Claims

Claims 13-30 are pending for examination on the merits.

2. Restriction Requirement

In the September 2, 2004 Office Action, the Examiner has restricted the above-identified application to one of the following groups:

Claims 13-30 (in part), drawn to compounds of formula I where the moiety ligand is:

- I. unfused 1,3-diazines (moiety formulae XI, XII, and XIII);
- II. pyrrolopyridine (moiety formula XV);
- III. piperidines with additional imidazole (moiety formula XIV);
- IV. pyrazole (moiety formula IX);
- V. indolone (moiety formula XXVIII);
- VI. oxygen containing 10-membered ring (moiety formula XXVI);
- VII. quinone derivative (moiety formula VI);
- VIII. nitriles (moiety formula XXVII);
- IX. amides (moiety formulae XVI, XIX);
- X. bicyclic ketone (moiety formula VIII);
- XI. ether (moiety formula XXIV); and
- XII. miscellaneous non-heterocyclic (moiety formulae X, XX, and XXIX).

The restriction requirement further stated that, for "classification purposes, if diverse ligand fall in different classes, the class that has the higher Group number dominates. For example if a ligand at one end falls in Group I and the ligand at the other end falls in Group IX, the compound will be classified in Group I."

In response to the restriction requirement, Applicants elect, with traverse, to prosecute Group I, Claims 13-30 (in part), drawn to homodimers and heterodimers of formula II where the moiety ligand is unfused 1,3-diazines (moiety formulae XI, XII, and XIII).

Claims 13-18, and 24-30 read on elected restriction group I.

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Applicants traverse the restriction requirement for the following reasons. The present application is a divisional of U.S.S.N. 10/093,068 filed on March 6, 2002, now U.S. Patent No. 6,750,241. During prosecution of the '068 application, a Restriction Requirement was also made. The present application was filed to pursue claims that fell within a single group of the prior '068 restriction requirement.

The present restriction requirement appears to be an attempt by the Examiner to define inventions within individual claims. Applicants submit that were the claims to be modified to conform to the present restriction requirement, it would mean redefining the invention in a manner conceived of not by the inventors but by the Examiner. This course would lead to the dilemma foreseen in *In re Weber* where the invention as defined by the Examiner is not necessarily described in the specification. Clearly forming sub-genuses of compounds based on USPTO search classification schemes of certain substituents, does not necessarily correspond to the subgenuses determined by the inventors from their research. A restriction practice in which the genus of compounds that is allowed to be claimed is defined *ex post facto* by the Examiner leaves the Applicant incapable of drafting a specification with proper antecedent basis for the claims that ultimately result from the examination process.

Applicants respectfully request that the restriction requirement be withdrawn, and that examination proceed based on the presently pending claims.

Should the Examiner wish to discuss any aspect of the present application, the Examiner is invited to telephone the undersigned agent for Applicants at (650) 808-6144.

Respectfully submitted,

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